



DEPARTMENT OF THE TREASURY

Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Pursuant to section 70913 of the Infrastructure Investment and Jobs Act, the Department of the Treasury has prepared the report provided below regarding its financial assistance programs that provide funding that may be used by recipients for infrastructure projects.

FOR FURTHER INFORMATION CONTACT: For further information about the programs administered by the Office of Recovery Programs, contact Brette Fishman, Director, Office of Grant Policy, Office of Recovery Programs, at OfficeOfRecoveryPrograms@treasury.gov or (844) 529-9527.

For further information about the RESTORE Act, Direct Component program administered by the Office of Gulf Coast Restoration, contact Maureen Klovers, Program Director, Office of Gulf Coast Restoration at maureen.klovers2@treasury.gov or (844) 529-9527.

SUPPLEMENTARY INFORMATION:

Treasury's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

1. INTRODUCTION

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), which includes the “Build America, Buy America Act” (the Act). This Act ensures that Federal infrastructure programs require the use of materials produced in the United States, increases the requirement for American-made content, and strengthens the waiver process associated with Buy America provisions.

The Act requires that within 60 days of its enactment, January 14, 2022, each agency must submit to the Office of Management and Budget (OMB) and Congress and publish in the Federal Register a report (“60-day report”) listing all Federal financial assistance programs for infrastructure administered by the agency. In these 60-day reports, agencies are required to identify and provide a list of which of these programs are “deficient,” as defined in the Act.

In an effort to aid agencies towards compliance with Sections 70913 (Identification of Deficient Programs) and 70914 (Application of Buy America Preference) of the IIJA, OMB issued memorandum M-22-08, *“Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act”* on December 20, 2021. This memorandum provides criteria that assist agencies in identifying which programs constitute infrastructure programs and helps them determine if any of these programs are considered deficient as described in section 70913(c) of the IIJA.

OMB memorandum M-22-08 also informs agencies regarding items that are required to be contained in the 60-day report for each infrastructure program, which includes identifying all domestic content procurement preferences applicable to the program, providing details on any preference requirement, and providing a description of the types of infrastructure project that receive funding under the program. Additionally, for each program, agencies should include the number of recipients and the available funds for the program in each fiscal year.

This report errs on the side of over-inclusiveness, given the requirement to submit this report at this time. As instructed by OMB, Treasury has included all programs for which funds may be obligated for infrastructure under any award. After OMB releases implementation guidance as outlined in Section 70915 of the IIJA, Treasury will re-evaluate its identification of agency programs that are subject to Build America, Buy America requirements.

2. FINANCIAL ASSISTANCE PROGRAMS FOR INFRASTRUCTURE

Treasury’s main organizational components that provide financial assistance include: The Internal Revenue Service and the Departmental Offices (including the Community Development

Financial Institutions Fund and the Office of Recovery Programs (ORP)). Of those components, based on program analysis, only DO has Federal financial assistance programs related to infrastructure that merit inclusion in the 60-day report. This section identifies and describes the active programs applicable to the IJA.

2.1 ORP Active Financial Assistance Programs for Infrastructure

- **Coronavirus State and Local Fiscal Recovery Fund CFDA # 21.027 (SLFRF)** - Pub. L. No. 117-2. Sections 602 and 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act (the ARP Act) established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund respectively (referred to as the “Coronavirus State and Local Fiscal Recovery Funds” or “SLFRF”). SLFRF provides \$350 billion in total funding for Treasury to make payments to States (defined to include the District of Columbia), U.S. Territories (defined to include Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Tribes, Metropolitan cities, Counties, Consolidated Governments, and (through States) Nonentitlement units of local government for eligible activities outlined in sections 602(c) and 603(c) of the Social Security Act, and Treasury’s implementing regulations, 31 CFR Part 35.
- **Capital Projects Fund CFDA # 21.029 (CPF)** -Pub. L. No. 117-2. Title III Section 604 of the ARP Act established the Capital Projects Fund and provides \$10 billion for Treasury to make payments to States, Tribes, Territories, and Freely Associated States to carry out critical capital projects that directly enable work, education, and health monitoring including remote options in response to the public health emergency with respect to COVID-19.
- **Homeownership Assistance Fund CFDA # 21.026 (HAF)** -Pub. L. No. 117-2. Title III, Subtitle B, Section 3206 of the ARP Act established the Homeowner Assistance Fund and provides \$9.9 billion for Treasury to make payments to States (defined to include the District of Columbia, Puerto Rico,

U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Tribes or tribally designated housing entities, as applicable, and the Department of Hawaiian Home Lands to mitigate financial hardships associated with the coronavirus pandemic, including for the purposes of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

2.2 DO Active Financial Assistance Programs for Infrastructure

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) Direct Component Program, CFDA # 21.015

- On July 6, 2012, the President signed into law the RESTORE Act to respond to the April 20, 2010 *Deepwater Horizon* Oil Spill in the Gulf of Mexico and the resulting ecological and economic disaster caused by the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon*. The RESTORE Act authorized five grant programs to fund programs, projects, and activities that restore and protect the environment and economy of the Gulf Coast region. Treasury's Office of Gulf Coast Restoration administers two of the five grant programs, the Direct Component and Centers of Excellence Research Grants Programs, which are listed under a single CFDA number. The RESTORE Act also established the Gulf Coast Restoration Trust Fund that is funded by eighty percent of the administrative and civil penalties paid by the responsible parties pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act in connection with the Deepwater Horizon oil spill. The Trust Fund provides funding for the five federal financial assistance programs authorized by the RESTORE Act (not appropriated funds). The Direct Component program provides funding to four Gulf Coast States, twenty-three Florida counties, and twenty Louisiana parishes, and the Centers of Excellence Research Grants Program provide funding to five states for eligible activities outlined in the RESTORE Act and Treasury's implementing regulations, 31 CFR Part 34. The Direct Component Program funds some infrastructure projects as

defined by Section 70912(5) of the IIJA, but many projects funded by the Direct Component Program are not for infrastructure. The Centers of Excellence Research Grants Program does not fund any infrastructure. See Section 3 for further details.

3. FINANCIAL ASSISTANCE INFRASTRUCTURE PROGRAMS DEFICIENCY DETERMINATION

Table 3-1 depicts the deficiency status of each Treasury financial assistance infrastructure program, as it relates to Section 70914¹ of the IIJA.

Table 3-1 Deficiency Determination by Program

Entity	Program	Deficiency Status ²	Reason for Deficiency	Domestic Content Procurement Preference Applicable ³	Type of Infrastructure Projects that Receive Funding under the Program	# of Recipients in FY 19, 20 and 21	FY 19, 20 and 21 Total Available Funding
ORP	SLFRF	Deficient as of 1/14/21	The program is deficient with respect to Section 70914, per item 1 of section 70913 (see footnote 3). The Program does not plan to issue awards after May of 2022.	NA	Recipients have significant flexibility on how to allocate funds, and projects may include necessary investments in water, sewer, or broadband infrastructure; a broad variety of investments to respond to the public health and negative economic impacts of the pandemic; and a broad variety of infrastructure that might typically be funded under the provision of government services.	FY19- FY20: NA FY21: 4921	FY19, FY20: NA FY21: \$350,000,000,000

¹ Section 70914 of the IIJA provides that, as of May 14, 2022, none of the funds made available for a Federal financial assistance program for infrastructure, including each applicable program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

² As discussed in M-22-08 and pursuant to the IIJA, an infrastructure program is considered deficient and therefore inconsistent with section 70914 if: per section 70913 it does not require that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States; it does not issue waivers and written justifications as specified in section 70914; or (3) it is subject to a waiver of general applicability.

³ Domestic content procurement preferences include the following: section 313 of title 23, United States Code; section 5323(j) of title 49, United States Code; section 22905(a) of title 49, United States Code; section 50101 of title 49, United States Code; section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4)); section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3 3914); any domestic content procurement preference included in an appropriations Act; and any other domestic content procurement preference in Federal law (including regulations). It does not include the Uniform Guidance.

Entity	Program	Deficiency Status ²	Reason for Deficiency	Domestic Content Procurement Preference Applicable ³	Type of Infrastructure Projects that Receive Funding under the Program	# of Recipients in FY 19, 20 and 21	FY 19, 20 and 21 Total Available Funding
	CPF	Deficient as of 1/14/21	The program is deficient with respect to Section 70914, per item 1 of section 70913 (see footnote 3) All awards will be issued before May 2022, except for a subset of Tribal awards.	NA	Recipients have significant flexibility on how to allocate funds. We expect some funding to be used for broadband infrastructure projects and for construction of community centers, and similar facilities.	FY19- FY20:NA FY21: NA	FY19, FY20: NA FY21:NA
	HAF	Deficient as of 1/14/21	The program is deficient with respect to Section 70914, per item 1 of section 70913 (see footnote 3) The Program does not plan to issue awards after May of 2022.	NA	Projects include measures to prevent homeowner displacement, such as home repairs to maintain the habitability of a home, including the reasonable addition of habitable space to alleviate overcrowding, or assistance to enable households to receive clear title to their properties.	FY19- FY20: NA FY21: 353	FY19, FY20: NA FY 21: \$9,961,000,000

Entity	Program	Deficiency Status ²	Reason for Deficiency	Domestic Content Procurement Preference Applicable ³	Type of Infrastructure Projects that Receive Funding under the Program	# of Recipients in FY 19, 20 and 21	FY 19, 20 and 21 Total Available Funding
DO	RESTORE Act	Deficient as of 1/14/21	The program is deficient with Section 70914, per item 1 of section 70913 (see footnote 3 on page 6)	NA	<p>The RESTORE Act, which authorized the Direct Component Program, lists eleven eligible project or program purposes, two of which are "[i]nfrastructure projects benefitting the economy or ecological resources, including port infrastructure" and "[c]oastal flood protection or related infrastructure."</p> <p>The Direct Component-funded projects with a primary eligible purpose of "infrastructure" vary widely. To date, these have included building a roll-on/roll-off facility at a port, wastewater treatment plants, drinking water treatment plants, and roads and bridges, as well as the construction or upgrading of levees, rock jetties, and other flood protection structures.</p> <p>Other Direct Component-funded projects are not considered to have a primary purpose of infrastructure because they are aligned to one of the nine other Direct Component eligible purposes, even though the projects may involve construction. For example, the construction of an aquarium falls under the Direct Component eligible purpose of "[p]romotion of tourism in the Gulf Coast Region, including promotion of recreational fishing," not an infrastructure purpose.</p>	<p>FY19:11</p> <p>FY20:17</p> <p>FY21:14⁴</p>	<p>FY19: \$129,970,078.6 4</p> <p>FY20: \$99,265,125.10</p> <p>FY 21: \$42,585,192.28 5</p>

(Authority: Pub. L. No 117-58 (Nov. 15, 2021))

Dated: January 18, 2022.

Marti Adams,

Executive Secretary.

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⁴ This is the number of entities receiving new Direct Component awards in each of the fiscal years indicated. This does not include entities with active awards received in prior years.

⁵ The figures presented in this column include all new Treasury RESTORE Act funded obligations for the Direct Component Program (no Centers of Excellence Program obligations are included since that program does not fund any infrastructure or construction). This encompasses obligations related to all new awards, all monetary amendments, and all closeouts (the latter often resulting in a deobligation).